

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ryan Calo	Team: Team # 1	CCRB Case #: 200200889	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 02/03/2002 5:25 AM	Location of Incident: 32nd Avenue & 101st Street	Precinct: 115	18 Mo. SOL 8/3/2003	EO SOL 8/3/2003	
Date/Time CV Reported Fri, 02/08/2002 5:02 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/08/2002 5:02 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Timothy Erwig	29677	919006	115 PCT
2. POM Sean Downes	29467	918975	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Timothy Erwig	Abuse: PO Erwig stopped and questioned § 87(2)(b)	
B.POM Timothy Erwig	Force: PO Erwig used physical force against § 87(2)(b)	
C.POM Timothy Erwig	Discourtesy: PO Erwig spoke rudely to § 87(2)(b)	
D.POM Sean Downes	Discourtesy: PO Downes spoke obscenely and/or rudely to § 87(2)(b)	

## Synopsis

§ 87(2)(b) was arrested on February 3<sup>rd</sup>, 2002, for allegedly breaking into a car. He professes total innocence. He claims that two officers, between whom he could not distinguish because of their physical similarities and the poor lighting conditions, stopped him on the street outside his house and arrested him with physical force. § 87(2)(g)

## Summary of Complaint

§ 87(2)(b) is § 87(2)(b), § 87(2)(b) old, white male resident of East Elmhurst § 87(2)(b)

§ 87(2)(b) called the CCRB on January 8<sup>th</sup>, 2002, five days after the incident, to state that although he had not broken the law, two officers approached him on the street, used physical force against him, and cursed at him.

§ 87(2)(b) was interviewed by the CCRB on January 20<sup>th</sup>, 2002, at which time he stated the following. At 5:00 AM on January 3<sup>rd</sup>, 2002, he took a taxi to his home in East Elmhurst from Manhattan, where he had been drinking until approximately 2:00 AM. He was not overtly intoxicated but could not give the specifics of his alcohol ingestion. He lives on § 87(2)(b) and, because of the direction of traffic, he had to be dropped off at the corner of Northern Boulevard and 101<sup>st</sup> Street. On the corner opposite him, he observed a black undercover vehicle. He was walking towards his home at § 87(2)(b) when suddenly two officers in plainclothes jumped out of the black car. They approached him and immediately put him up against the hood of their vehicle and handcuffed him. One of them put something hard up against his ribs. One of them stated that they “saw [him] with [his] eyes on that truck.” He could not distinguish between the two men, it was dark and both were white males with black hair.

The officers proceeded to ask him why he was inside a certain vehicle. He believes they meant a blue truck that was parked near their black vehicle but he is not sure. They mentioned in court that the car he was alleged to have broken into was a 1992 Blazer. The truck had not been broken into, that he could see. At one point, in response to their questioning, he stated that he “must have seen something he liked.” The officers took this as a confession, although he meant it sarcastically. The statement is something they reiterated at his court appearance. He told the officers that he was innocent and even told them that his own car, an Eagle Talon, was parked on that very street. Fearing further harassment, however, he did not tell them which car was his or that he lived on § 87(2)(b) at all. In court, he pled not guilty and, as of his interview, there was no verdict in the case. § 87(2)(b)

## Results of Investigation

The CCRB contacted § 87(2)(b) who reported the Chevy Blazer stolen on behalf of his father, § 87(2)(b) who actually owns it. It had been parked on Pinkin Avenue and Grant Avenue near the subway station when it was stolen between 5:45 AM and 4:00 PM on Thursday, February 1<sup>st</sup>, 2002. § 87(2)(b) received a call from NYPD detectives on February 5<sup>th</sup>, 2002, who told him that his vehicle had been recovered and it was stolen by a man named § 87(2)(b) whom he does not know personally.

The CCRB repeatedly attempted to contact ADA Dan Bresnahan who is the prosecutor in the case against § 87(2)(b). Mr. Bresnahan did not return any of the four phone calls placed to him. § 87(2)(b) [§§ 86(1)(3)&(4)] § 87(2)(b)

## MOS Testimony

PO Timothy Erwig, identified on the arrest report as the arresting officer, was interviewed as a subject on January 27<sup>th</sup>, 2002 (enc.). He and his partner, PO Downes, were parked in an unmarked car on

the corner of 101<sup>st</sup> Street and Northern Boulevard. They were assigned to auto robbery. The neighborhood is predominately Hispanic and there are several conditions operating within it including, but not limited to, grand larceny auto. At approximately 5:00 AM, he and his partner observed a male, either white or Hispanic, pacing back and forth on the corner. The man was not wearing a jacket, although it was cold. He proceeded to walk north on 101<sup>st</sup> Street. The officers elected to follow him. PO Erwig was driving. They officers lost sight of him briefly but then observed the same man exiting a blue Chevy Blazer which was parked on 101<sup>st</sup> Street. The vehicle had a broken window.

PO Erwig and PO Downes exited their vehicle and approached the man, subsequently identified as § 87(2)(b). PO Erwig asked § 87(2)(b) what he was doing. § 87(2)(b) replied that he had just been dropped off by a taxi and was on his way home. PO Erwig believed this to be a lie because he had just seen § 87(2)(b) pacing several blocks away. PO Erwig looked into the car and saw that the ignition was broken. PO Erwig asked § 87(2)(b) why he was in the car and § 87(2)(b) denied being in the car, which was also a lie. PO Erwig stated that he had seen him in the car and § 87(2)(b) replied that “he must have seen something he liked.” PO Erwig took this statement literally; it did not seem the sort of situation where someone would make a joke.

One of the officers ran the plates on the Chevy and it came back stolen. PO Erwig placed § 87(2)(b) under arrest. PO Erwig handcuffed him. He was not physically resistant and no one was injured. However, § 87(2)(b) was verbally combative and PO Erwig told him, at one point, that he was going to be arrested “whether he liked it or not.” He had to raise his voice and change his tone to gain compliance, but he did not swear. He also did not hear PO Downes swear. § 87(2)(b) appeared intoxicated in that he was flushed, slurred his words, and smelled of alcohol. He also admitted that he had been drinking. He was charged initially with grand larceny auto, although the charges were reduced to unauthorized use of a motor vehicle by the ADA. A sergeant confirmed the arrest and a sector car transported § 87(2)(b) to the precinct while PO Erwig and his partner gathered evidence.

PO Downes was interviewed as a potential subject officer on April 4<sup>th</sup>, 2002 (enc.). In essence, PO Downes reiterated the statements made by PO Erwig. Only two details differed. PO Downes remembered that the truck was black and also stated that the neighborhood was predominately African American, rather than Hispanic.

## **Documents**

The arrest report for § 87(2)(b) lists the charged against him as § 87(2)(b). PO Erwig was the arresting officer.

## **Prior Bad Acts**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] PO Erwig and PO Downes have no admissible prior bad acts.

## **Conclusions and Recommendations**

§ 87(2)(g)

The first allegation deals with the initial stop. § 87(2)(b) claims he was simply walking home when he was accosted by the two officers. He does live on § 87(2)(b), according to his contact information. However, PO Erwig and PO Downes § 87(2)(g) observed § 87(2)(b) pacing on a corner. This first fact is

corroborated by § 87(2)(b) account in so far as he stated that he had to be dropped off at the corner of Northern Boulevard, instead of in front of his house. Allegedly, § 87(2)(b) was not wearing a jacket and it was cold. He was in a high crime neighborhood. § 87(2)(g)

Having decided to follow § 87(2)(b) the officers observed him exiting a vehicle which looked broken into in that the driver side window was broken. § 87(2)(g) The undersigned spoke to the owner of the car who described the circumstances of its theft. § 87(2)(g)

§ 87(2)(b) alleges that force was used against him. § 87(2)(g)

The officers both describe the force used as minimal and maintain that § 87(2)(b) was not physically resistant. § 87(2)(b) did not sustain an injury, beyond an alleged redness on his wrists which was not documented. He did not complain of this injury at the time of his arrest. § 87(2)(g)

In his initial complaint, § 87(2)(b) alleged that both officers swore at him. He did not specify what they said. In his CCRB interview, § 87(2)(b) made no mention of profanity. In any event, PO Erwig admitted in his testimony that he had to raise his voice and change his tone in order to gain compliance from the complainant. He denied using profanity. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: